

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: 12-27-12
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MOUSTAPHA MAGASSOUBA,

Plaintiff,

v.

UNITED STATES OF AMERICA,
et al.,

Defendant.
-----X

08 Civ. 4560 (LAP) (HBP)

ORDER ADOPTING REPORT &
RECOMMENDATION

LORETTA A. PRESKA, Chief United States District Judge:

Plaintiff Moustapha Magassouba ("Plaintiff") brought this action pro se against the United States of America (the "United States" or the "Government"); federal prison official defendants James N. Cross, former Warden of the Metropolitan Correctional Center (MCC), and MCC Corrections Officers Armando Perlaza and Donnell Scott (together with Cross, the "Federal Defendants"); and inmate defendants Goldson Hugh, Thomas Garfield, and Barris Larry (the "Inmate Defendants").

Presently before the Court is Plaintiff's request submitted on or about November 30, 2012 that the Court order defendants to show cause on or before December 18, 2012

Why an order should not be issued pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining the defendant during the pendency of this action from delaying discoveries [sic],

testimony, hearing, trial, documents, involving the Officer Perlaza, failure to protect the Plaintiff from being injured by three Inmates which took place on May 25, 2008 at MCC New York; and enjoining defendants Goldson Hugh, and Thomas Garfield from filing any pleading or otherwise defense [sic] because the default has been entered under Rule 55, Fed.R.Civ.P.

Plaintiff also seeks a temporary restraining order preventing the Federal Defendants from delaying discovery and an order directing the Federal Defendants to post security so that he can finance his litigation.

On December 4, 2012, Magistrate Judge Henry B. Pitman filed his Report and Recommendation (the "Report") [dkt. no. 107] finding that Plaintiff's application for an order to show cause, a preliminary injunction, a temporary restraining order, and an order directing defendants to post security should be denied in all respects. (Report at 4.) Judge Pitman further deemed Plaintiff's "submission to be an application for expedited discovery" and ordered defendants to submit their response no later than December 14, 2012.

After reviewing the Report as well as Plaintiff's Opposition and Objection to the Report and Recommendation [dkt. no. 110] and finding Judge Pitman's analysis to be correct and appropriate upon de novo review, see Fed.R.Civ.P. 72(b), the Report is hereby adopted. As Judge

Pitman correctly recognizes, the order to show cause and the substantive relief sought by Plaintiff are either inappropriate vehicles at this stage of the litigation or, as in the case of Plaintiff's request for the posting of security, beyond the jurisdiction of the Court. In light of Plaintiff's pro se status, the Court further endorses the Report's construing of Plaintiff's submission as an application for expedited discovery. Defendants are thus ordered to submit their response by January 31, 2013, if they have not done so already.

CONCLUSION

The Report is hereby ADOPTED. Plaintiff's application for an order to show cause, a preliminary injunction, a temporary restraining order, and an order directing defendants to post security is hereby DENIED. Plaintiff's application shall be construed instead as an application for expedited discovery and defendants are ordered to submit their responses by January 31, 2013, if they have not so already.

SO ORDERED.

Dated: December 27, 2012

Loretta A. Preska

LORETTA A. PRESKA
Chief U.S. District Judge